

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 Case No.: 2:19-cv-01668-JAD-EJY

4 DAVONTTE SMITH,  
5 Plaintiff.

6 **Order Dismissing Action**

7 v.

8 LVMPD, et al.,  
9 Defendants.

10 Plaintiff, Davontte Smith, brings this civil-rights case under § 1983 for events he alleges  
11 occurred during his incarceration at the Clark County Detention Center.<sup>1</sup> On September 25,  
12 2019, the Court directed plaintiff to file a fully completed application to proceed *in forma*  
13 *pauperis* or pay the \$400 filing fee.<sup>2</sup> The Court expressly warned him that his failure to file the  
14 completed application or pay the filing fee within 30 days from the date of that order would  
15 result in the dismissal of this case.<sup>3</sup> The deadline has passed, and plaintiff has not responded to  
16 the Court's order.

17 District courts have the inherent power to control their dockets and “[i]n the exercise of  
18 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>4</sup> A  
19 court may dismiss an action with prejudice based on a party's failure to prosecute an action,  
20 failure to obey a court order, or failure to comply with local rules.<sup>5</sup> In determining whether to

21 <sup>1</sup> ECF No. 1-1 (complaint).

22 <sup>2</sup> ECF No. 3 (order).

23 <sup>3</sup> *Id.*

<sup>4</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

<sup>5</sup> See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with  
2 local rules, the court must consider several factors: (1) the public's interest in expeditious  
3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
5 availability of less drastic alternatives.<sup>6</sup>

6 I find that the first two factors—the public's interest in expeditiously resolving the  
7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.  
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury  
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
10 prosecuting an action.<sup>7</sup> The fourth factor is greatly outweighed by the factors in favor of  
11 dismissal, and a court's warning to a party that his failure to obey the court's order will result in  
12 dismissal satisfies the consideration-of-alternatives requirement.<sup>8</sup> Plaintiff was warned that his  
13 case would be dismissed if he failed to pay the fee or submit a completed application within 30  
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18 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–  
19 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to  
20 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.  
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,  
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

21 <sup>6</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;  
*Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

22 <sup>7</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 <sup>8</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

1 days.<sup>6</sup> So, he had adequate warning that his failure to pay the fee or submit a completed  
2 application would result in this case's dismissal.

3 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without  
4 prejudice based on plaintiff's failure to pay the fee or submit a completed application in  
5 compliance with this Court's September 25, 2019, order; and

6 The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS  
7 CASE.

8 DATED: November 18, 2019.

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U.S. District Judge Jennifer A. Dorsey

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23 <sup>6</sup> ECF No. 3 (order).